IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.2765 of 1984

Shri Laxman Krishna Shinde — Petitioner
Vs.
Bali Dattu Sarnaik since deceased
through his Legal heir:
Mrs.Sarita Sunil Sarnaik — Respondent

Mr. Gajanan Savagave and Mr.Sujit S Wagh for petitioner.

None for respondent.

CORAM: B.H.MARLAPALLE,J.

June 05, 2006.

ORAL JUDGMENT:

1. The petitioner claimed to be the original tenant in respect of the following lands of village Marali:

Gat No.	Area
25/170	39 Gunthas
53/1 /188	36 Gunthas
53/3 /182	18 Gunthas

The respondent was the landlord of the said land. By way of proceedings filed under Section 33B of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Tenancy Act" for short) the suit lands came to be

restored to the landlord in the year 1972 as a result of the order passed in the said proceedings i.e. Tenancy Case No.201/1961-62. The possession of the land was handed over to the landlord as under:

Gat No.	**Area**
25/170	39 Gunthas
53/1 /188	29 Gunthas

2. Tenancy Case No.15 of 1973 was filed by the petitioner's late father alleging that the landlord and his wife had acted in breach of precondition set out under Sections 37 and 39 of the Tenancy Act and, therefore, the applicant was entitled to be restored of the suit land. It was alleged that the land was being cultivated by the Opponent Nos.3 and 4 therein and the landlord was likely to sell the said land to the said opponents. In short it was claimed that there was a breach of the provisions of Section 37 and/or Section 39 of the Tenancy Act. The Tahsildar, Panhala after hearing the respective parties was pleased to reject the said application on 29/3/1974 and noted that the tenant failed to bring any evidence on record to show that the suit land was not

being cultivated by the landlord. This order of the Tahsildar received finality inasmuch as it was not challenged before the appellate forum.

3. The present petitioner filed Tenancy Case No.1 of 1980 again on the very same grounds as were raised in Tenancy Case No.15 of 1973, that is breach of Sections 37 and 39 of the Tenancy Act. The application was dismissed by the Tenancy Aval Karkun, Panhala on 1/7/1980 by specifically observing that there was no evidence to show that the landlord had acted in breach of the provisions of Section 37 and/or Section 39 of the Tenancy Act. This order passed by the Aval Karkun came to be challenged in Tenancy Appeal No.98 of 1980 and the Asst. Collector, Kolhapur was pleased to allow the appeal by setting aside the order passed by the Aval Karkun on 1/7/1980. The landlord, therefore, challenged the order passed by the Asst. Collector in a revision application and the learned Member of the Maharashtra Revenue Tribunal at Kolhapur was pleased to allow the said revision by his judgment and order dated 22/8/1983. The order of the Asst. Collector came to be set aside and that of the Aval Karkun was restored. This order passed by the MRT is under

challenge in this petition.

4. The learned Member of the MRT noted that the earlier application registered as Tenancy Case No.15 of 1973 was filed on the very same grounds as set out in Tenancy Case No.1 of 1980 i.e. the landlord did not cultivate the land, because he handed over to tenants for cultivation and the landlord was likely to sell the said land. The grounds being verbatim same the learned Member of the MRT held that the second application i.e. Tenancy Case No.1 of 1980 was hit by the principle of res judicata. Perusal of the judgment in Tenancy Case No.15 of 1973 passed by the Tahsildar, Panhala and the judgment in Tenancy Case No.1 of 1980 rendered by the Tenancy Aval Karkun on 1/7/1980 clearly goes to show that both the applications were filed on the same grounds. The learned counsel for the petitioner sought to submit that the second application was filed on the ground that the landlord had already sold the lands to the tenants. This submission has to be rejected for more than one reasons. Firstly the so called tenants or purchasers were not impleaded as parties in Tenancy Case No.1 of 1980 and they were not parties either before the lower appellate authority or the

revisional authority and in any case this submission appears to be made for the first time in the oral arguments advanced now. The view taken by the learned Member of the MRT does not suffer from any errors apparent on the face of record and, therefore, there is no reason to cause interference in the impugned order under the supervisory powers under Article 227 of the Constitution. The challenge to the impugned order is devoid of merits and the same must, therefore, fail.

5. In the premises, the writ petition is dismissed. Rule discharged. No costs.

(B.H.MARLAPALLE,J.)